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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590	01/13/2004			EXAMINER THANGAVELU, KANDASAMY
Scott A Horstemeyer Thomas Kayden Horstemeyer & Risley LLP Suite 1750 100 Galleria Parkway NW Atlanta, GA 30339-5948			ART UNIT 2123	PAPER NUMBER 5 DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/580,700	SWIFT, LARRY	
	Examiner	Art Unit	
	Kandasamy Thangavelu	2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-41 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 May 2000 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This communication is in response to the Applicants' Response mailed on November 17, 2003. Claims 1, 12, 23-34 and 36-41 were amended. Claims 1-41 of the application are pending. This office action is made final.

Response to Arguments

2. Applicant's amendments filed on November 17, 2003 have been fully considered. Applicant's amendments to independent claims 1, 12, 23, 34 and 36-41 filed on November 17, 2003 are not supported by the specification as described in Paragraph 4 below. The claims remain rejected.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. §112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one

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skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

41. Amended claim 1 states, "means for specifying a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day".

There is no support for this claim limitation in the specification. Specification Page 16, Lines 6-11 state that a summary period includes the days and the times of the days that are of interest; for example ... a summary period may be defined as the days of Monday through Friday, and the hours between 8:00 a.m and 5:00 p.m; the report period encompasses the plurality of summary periods; each summary period must encompass the corresponding period of time consequently within the reporting period. Specification Page 16, Lines 15-18 state that a summary period and a reporting period are merely intended as illustrated examples; one alternative embodiment of the processor would provide user capability to specify a summary period and a reporting period tailored to the particular needs of the user. Fig. 4 shows Reporting period: 11/9/** - 12/7/** and Summary period: Mon-Fri, 8:A.M to 5:00 P.M.

4.2 Amended claim 12 states, "a user interface, wherein a user specifies a report period, said report period corresponding to a reporting period of interest, and said user specifies a plurality of summary periods, each said summary period corresponding to a different portion of said

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reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day".

There is no support for this claim limitation in the specification as described in Paragraph 4.1 above.

4.3 Amended claim 23 states, "specifying a report period, said report period corresponding to a reporting period of interest and a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day".

There is no support for this claim limitation in the specification as described in Paragraph 4.1 above.

4.4 Amended claim 34 states, "receiving a specification for a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day".

There is no support for this claim limitation in the specification as described in Paragraph 4.1 above.

4.5 Amended claim 36 states, "retrieving a plurality of selected data parameters from a communication device, such that said plurality of selected data parameters corresponds to a

plurality of summary periods, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day".

There is no support for this claim limitation in the specification as described in Paragraph 4.1 above.

4.6 There is no support for the amendments to the claim limitations made in claims 37-41 in the specification as described in Paragraph 4.1 above.

4.7 Claims rejected but not specifically addressed are rejected based on their dependency to a rejected claim.

Claim Interpretations

5. Since the amendments to the claim limitations made to the independent claims 1, 12, 23, 34 and 36-41 are not supported by the specification, claims have been interpreted in the light of the specification.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

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- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

7. Claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32 and 34-41 are rejected under 35

U.S.C. 102(e) as being anticipated by **Engel et al. (EN)** (U.S. Patent 6,320,585).

7.1 **EN** teaches Displaying resource performance and utilization information. Specifically, as per Claim 1, **EN** teaches a system for determining and predicting performance of a communication device (CL1, L54 to CL2, L5; CL2, L14-29; CL9, L5-6); comprising:

means for specifying a report period, the report period corresponding to a reporting period of interest (CL2, L14-29; CL8, L20-23);

means for specifying a plurality of summary periods, each summary period corresponding to a portion of the reporting period (CL1, L54 to CL2, L5; CL8, L22-34);

means for processing a retrieved plurality of selected data parameters into a plurality of performance parameters corresponding to actual performance of the communication device during each of the summary periods (CL1, L54 to CL2, L5; CL2, L32-36; Fig. 2; CL8, L22-34); and a plurality of trend parameters to predict future performance of the communication device (CL9, L5-6; CL9, L16-54; Fig. 11); and

means for presenting and displaying the plurality of performance parameters and the plurality of trend parameters in a trend report (CL1, L54 to CL2, L5; CL2, L27-29; CL6, L22-36; CL8, L47-57).

Per Claim 2: EN teaches a means for recommending a performance rating based upon the plurality of trend parameters (CL2, L21-29; Fig. 11).

Per Claim 8: EN teaches that the processing means determines the plurality of trend parameters using a statistical regression algorithm (CL9, L26-54; Fig. 11).

Per Claim 9: EN teaches that the statistical regression algorithm is a linear regression algorithm (CL9, L26-54; Fig. 11).

Per Claim 10: EN teaches that the processing means further process the plurality of trend parameters to predict the time at which capacity of the communication device should be changed (CL2, L21-29; Fig. 11; Fig. 10).

7.2 As per Claim 12, EN teaches a system for determining and predicting performance of a communication device (CL1, L54 to CL2, L5; CL2, L14-29; CL9, L5-6); comprising:

a data poller, wherein the data poller collects a plurality of data parameters from the communication device (CL8, L22-25);

a database which stores the data parameters (CL8, L25-34);

a user interface, wherein a user specifies a report period, the report period corresponding to a reporting period of interest (CL2, L14-29; CL8, L20-23); and the user specifies a plurality of summary periods, each summary period corresponding to a portion of the reporting period (CL1, L54 to CL2, L5; CL8, L22-34);

a processor, wherein the processor retrieves a plurality of selected data parameters from the database such that the plurality of selected data parameters corresponds to the plurality of

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summary periods (CL8, L25-34; CL8, L37-38; CL8, L47-58); and wherein the processor processes the plurality of selected data parameters into a plurality of performance parameters which correspond to actual performance of the communication device during each of the summary periods (CL1, L54 to CL2, L5; CL2, L32-36; Fig. 2; CL8, L22-34); and wherein the processor trends the plurality of performance parameters into a plurality of trend parameters to predict future performance of the communication device (CL9, L5-6; CL9, L16-54; Fig. 11);
a data presentation module, the module presents the plurality of processed performance parameters and the plurality of trend parameters in a trend report (CL1, L54 to CL2, L5; CL2, L27-29; CL6, L22-36; CL8, L47-57); and
a graphical user interface which displays the trend report (Fig. 2; CL2, L2-5).

Per Claims 13 and 19-21, these are rejected based on the same reasoning as Claims 2 and 8-10, as shown above. Claims 13 and 19-21 are system claims reciting the same limitations as Claims 2 and 8-10, using the processor as the means.

7.3 As per Claim 23, it is a method claim based on Claim 1, reciting all the limitations of Claim 1 and in addition specifying the limitation:

collecting a plurality of data parameters from the communication device.

EN teaches collecting a plurality of data parameters from the communication device (CL8, L22-25). **EN** teaches all other limitations as indicated in Paragraph 7.1 above.

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Per Claims 24 and 30-32, these are rejected based on the same reasoning as Claims 2 and 8-10, as shown above. Claims 24 and 30-32 are method claims reciting the same limitations as Claims 2 and 8-10, as taught through out by EN.

7.4 As per Claim 34, it is a computer medium claim based on Claim 12, reciting all the limitations of Claim 12 except the following limitations of claim 12:

a data poller, wherein the data poller collects a plurality of data parameters from the communication device; and

a database which stores the data parameters.

EN teaches all the limitations of this claim as indicated in Paragraph 7.2 above. The limitations not included in this claim are inherent in the claim.

Per Claim 35, this is rejected based on the same reasoning as Claim 2, as shown above. Claim 35 is a computer medium claim reciting the same limitation as Claim 2, as taught through out by EN.

7.5 As per Claim 36, EN teaches a method for determining and predicting; performance of a communication device (CL1, L54 to CL2, L5; CL2, L14-29; CL9, L5-6); the method comprising the steps of:

retrieving a plurality of selected data parameters from a communication device, such that the plurality of selected data parameters corresponds to a plurality of summary periods (CL8, L22-25);

processing the plurality of selected data parameters into a plurality of performance parameters corresponding to actual performance of the communication device during each of the summary periods (CL1, L54 to CL2, L5; CL2, L32-36; Fig. 2; CL8, L22-34);

trending the plurality of performance parameters into a plurality of trend parameters to predict future performance of the communication device (CL9, L5-6; CL9, L16-54; Fig. 11); and

recommending a performance rating based upon the trend parameters (CL2, L21-29; Fig. 11).

7.6 As per Claim 37, EN teaches a system for determining and predicting performance of a communication device (CL1, L54 to CL2, L5; CL2, L14-29; CL9, L5-6); comprising:

a user interface, wherein a user specifies a report period, the report period corresponding to a reporting period of interest (CL2, L14-29; CL8, L20-23); and the user specifies a plurality of summary periods, each summary period corresponding to a portion of the reporting period (CL1, L54 to CL2, L5; CL8, L22-34); and

a processor, wherein the processor detects a plurality of selected data parameters from the communications device such that the plurality of selected data parameters corresponds to the plurality of summary periods (CL8, L25-34; CL8, L37-38; CL8, L47-58); and wherein the processor processes the plurality of selected data parameters into a plurality of performance parameters which correspond to actual performance of the communication device during each of the summary periods(CL9, L5-6; CL9, L16-54; Fig. 11); and wherein the processor trends the plurality of performance parameters into a plurality of trend parameters to predict future

performance of the communication device (CL9, L5-6; CL9, L16-54; Fig. 11); and wherein the processor recommends a performance rating based upon the plurality of trend parameters (CL2, L21-29; Fig. 11).

7.7 As per Claim 38, it is a system claim based on Claim 13 (when claim 12 limitations are read into claim 13), reciting all the limitations of Claim 13.

This claim uses “means for” for specifying the components of the system, while Claim 12 lists the individual components. EN teaches all the limitations of this claim as indicated in Paragraph 7.2 above.

7.8 As per Claim 39, it is a method claim based on Claim 38.

This claim uses “means for” for specifying the components of the system, while Claim 12 lists the individual components. EN teaches all the limitations of this claim as indicated in Paragraph 7.2 above.

7.9 As per Claim 40, EN teaches a transmitter (Fig. 1); comprising:

a user interface, wherein a user specifies a report period, the report period corresponding to a reporting period of interest (CL2, L14-29; CL8, L20-23); and the user specifies a plurality of summary periods, each summary period corresponding to a portion of the reporting period (CL1, L54 to CL2, L5; CL8, L22-34);

a processor, wherein the processor retrieves a plurality of selected data parameters from the database such that the plurality of selected data parameters corresponds to the plurality of

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summary periods (CL8, L25-34; CL8, L37-38; CL8, L47-58); and wherein the processor processes the plurality of selected data parameters into a plurality of performance parameters which correspond to actual performance of the communication device during each of the summary periods (CL1, L54 to CL2, L5; CL2, L32-36; Fig. 2; CL8, L22-34); and wherein the processor trends the plurality of performance parameters into a plurality of trend parameters to predict future performance of the communication device (CL9, L5-6; CL9, L16-54; Fig. 11); and wherein the processor recommends a performance rating based upon the plurality of trend parameters (CL2, L21-29; Fig. 11); and a data presentation module, the module presents the plurality of processed performance parameters and the plurality of trend parameters in a trend report (CL1, L54 to CL2, L5; CL2, L27-29; CL6, L22-36; CL8, L47-57).

7.10 As per Claim 41, it is a device claim for the receiver having the same limitations as Claim 40, a device claim for the transmitter. EN teaches all the limitations of this claim as indicated in Paragraph 7.9 above.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 3-6, 14-17 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Engel et al. (EN)** (U.S. Patent 6,320,585) in view of **Hassell et al. (HA)** (U.S. Patent application 2002/0018473).

10.1 As per Claims 3-5, EN teaches the system of Claim 1. EN does not expressly teach per claim 3, that at least one of the plurality of data parameters is a burst statistic; per claim 4, a means for specifying the number of the plurality of burst ranges; and per claim 5, a means for specifying the percentage range for each one of the plurality of burst ranges.

HA teaches that at least one of the plurality of data parameters is a burst statistic (Para 0003; Para 0022-0024); a means for specifying the number of the plurality of burst ranges (Para 0058); and a means for specifying the percentage range for each one of the plurality of burst ranges (Para 0058). **HA** specifies the motivation for doing so are that the information on the size and extent of traffic bursts above CIR is extremely useful to determine how often the user exceeds the CI (Para 0018); each time a burst occurs in a given burst range, a counter

increments, thus keeping a count of the number of occurrences in that range (Para 0061); and the information is graphically presented to the user (Para 0066).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the system of **EN** with the system of **HA** that included at least one of the plurality of data parameters as a burst statistic; a means for specifying the number of the plurality of burst ranges; and a means for specifying the percentage range for each one of the plurality of burst ranges, as the information on the size and extent of traffic bursts above CIR would be extremely useful to determine how often the user exceeds the CIR; each time a burst occurs in a given burst range, a counter could be incremented, thus keeping a count of the number of occurrences in that range; and the information could be graphically presented to the user.

10.2 As per Claim 6, **EN** and **HA** teach the system of Claim 3. **EN** teaches that the processing means further comprises bandwidth utilization trending means which predicts future performance of the communication device relative to each bandwidth utilization range (CL9, L5-6; CL9, L16-54; Fig. 11), as that facilitates prediction of a time to reach a threshold number for bandwidth utilization (CL2, L 22-29). **EN** does not expressly teach the processing means further comprises a burst range trending means which predicts future performance of the communication device relative to each burst range.

HA teaches that at least one of the plurality of data parameters is a burst statistic (Para 0003; Para 0022-0024); a means for specifying the number of the plurality of burst ranges (Para 0058); and a means for specifying the percentage range for each one of the plurality of burst ranges (Para 0058). **HA** specifies the motivation for doing so are that the information on the size

and extent of traffic bursts above CIR is extremely useful to determine how often the user exceeds the CI (Para 0018); each time a burst occurs in a given burst range, a counter increments, thus keeping a count of the number of occurrences in that rang (Para 0061); and the information is graphically presented to the user (Para 0066).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to combine the system of **EN** with the system of **HA** that included the processing means further comprising a burst range trending means which predicts future performance of the communication device relative to each burst range, as that would facilitate prediction of a time to reach a threshold number for each burst range and the information on the size and extent of traffic bursts above CIR would be extremely useful to determine when the user would exceed the CIR and the information could be graphically presented to the user.

Per Claims 14-17 and 25-28, these are rejected based on the same reasoning as Claims 3-6 as shown above. Claims 14-17 and 25-28 are system and method claims reciting the same limitations as Claims 3-6, as taught through out by **EN** and **HA**.

11. Claims 7, 18 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Engel et al. (EN)** (U.S. Patent 6,320,585) in view of **Hassell et al. (HA)** (U.S. Patent application 2002/0018473), and further in view of **VanDervort (VA)** (U.S. Patent 5,699,346).

11.1 As per Claim 7, **EN** and **HA** teach the system of Claim 6. **EN** and **HA** do not expressly teach that at least one of the plurality of burst ranges is a total burst range corresponding to the

total number of all bits transmitted during each of the plurality of summary periods. **VA** teaches that at least one of the plurality of burst ranges is a total burst range corresponding to the total number of all bits transmitted during each of the plurality of summary periods (CL4, L50 to CL5, L4), as that enables the service provider to determine that the user properly subscribed his virtual connection and to determine how much network throughput can be sold to the subscribers (CL4, L50-62).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the system of **EN** and **HA** with the system of **VA** that included at least one of the plurality of burst ranges being a total burst range corresponding to the total number of all bits transmitted during each of the plurality of summary periods, as that would enable the service provider to determine that the user properly subscribed his virtual connection and to determine how much network throughput could be sold to the subscribers.

Per Claims 18 and 29, these are rejected based on the same reasoning as Claim 7 as shown above. Claims 18 and 29 are system and method claims reciting the same limitations as Claim 7, as taught through out by **EN**, **HA** and **VA**.

12. Claims 11, 22 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Engel et al. (EN)** (U.S. Patent 6,320,585) in view of **Colmant et al. (CO)** (U.S. Patent 6,144,662).

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12.1 As per Claim 11, **EN** teaches the system of Claim 1. **EN** does not expressly teach that the performance rating corresponds to a port speed of a port residing in the communications device, wherein the port speed corresponds to the rate at which data is transmitted through the port. **CO** teaches that the performance rating corresponds to a port speed of a port residing in the communications device, wherein the port speed corresponds to the rate at which data is transmitted through the port (CL4, L10-12; CL1, L48), as high port speed provides a high packet throughput (CL2, L32).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the system of **EN** with the system of **CO** that included the performance rating corresponding to a port speed of a port residing in the communications device, wherein the port speed corresponded to the rate at which data would be transmitted through the port, as high port speed would provide a high packet throughput.

Per Claims 22 and 33, these are rejected based on the same reasoning as Claim 11 as shown above. Claims 22 and 33 are system and method claims reciting the same limitations as Claim 11, as taught through out by **EN**, **HA** and **VA**.

Arguments

13.1 As per the applicant's argument that "Engel requires that the poll data be collected on the relevant variable for a baseline period (e.g. 3-6 weeks); ... the history table includes a record for each day of a baseline period; the granularity of the data that is stored in the history table is one

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day; Engel stack bar corresponds to a time period of one complete day; in Applicant's Fig. 4 the claimed summary period is from Monday through Friday, for the hours 8:00 a.m to 5:00 p.m, which is entirely different from the Engel stack bar corresponding to one entire day", the examiner respectfully disagrees. The Examiner ~~requests~~ ^{disagrees} the applicant's attention to the contradictions between what he described from Fig. 4 and what he claims in the amended claim

1. The amended claim 1 is not supported by the descriptions provided in Specification Page 16, Lines 6-11 and Lines 15-18.

It is also noted that Engel samples and stores data every 15 minutes. Thus although Engel's preferred time period is equivalent to one day, Engel has the capacity to report out in 15 minute intervals.

13.2 As per the applicant's argument with respect to amendments made to independent claim 12, there is no support for the amendments made as described in Specification Page 16, Lines 6-11 and Lines 15-18.

13.3 As per the applicant's argument with respect to amendments made to independent claim 23, there is no support for the amendments made as described in Specification Page 16, Lines 6-11 and Lines 15-18.

13.4 As per the applicant's argument with respect to amendments made to independent claim 34, there is no support for the amendments made as described in Specification Page 16, Lines 6-11 and Lines 15-18.

13.5 As per the applicant's argument with respect to amendments made to independent claim 36, there is no support for the amendments made as described in Specification Page 16, Lines 6-11 and Lines 15-18.

13.6 As per the applicant's argument with respect to amendments made to independent claims 37-41, there is no support for the amendments made as described in Specification Page 16, Lines 6-11 and Lines 15-18.

Conclusion

ACTION IS FINAL

14. Applicant's amendments to independent claims 1, 12, 23, 34 and 36-41 filed on November 17, 2003 are not supported by the specification. Therefore, the applicant's amendments to the independent claims are not given patentable weight. The claims are rejected using the previously used references. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

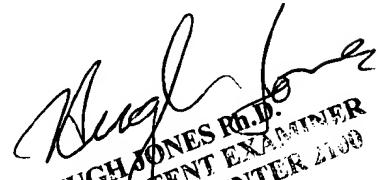
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kandasamy Thangavelu whose telephone number is 703-305-0043. The examiner can normally be reached on Monday through Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska, can be reached on (703) 305-9704. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

K. Thangavelu
Art Unit 2123
January 7, 2004


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